

**UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.<sup>1</sup>

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO ELECTRIC POWER AUTHORITY

Debtor.

PROMESA

Title III

No. 17 BK 4780-LTS

**This Motion relates to PREPA  
and shall be filed in Lead Case  
No. 17 BK 3283-LTS and Case  
No. 17 BK 4780-LTS.**

**DECLARATION OF FERNANDO M. PADILLA IN SUPPORT OF OMNIBUS MOTION  
OF PUERTO RICO ELECTRIC POWER AUTHORITY FOR ENTRY OF AN ORDER  
(A) AUTHORIZING PREPA TO REJECT CERTAIN POWER PURCHASE AND  
OPERATING AGREEMENTS, AND (B) GRANTING RELATED RELIEF**

<sup>1</sup> The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico ("Commonwealth") (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

I, Fernando M. Padilla, under penalty of perjury, declare as follows:

1. I am an Administrator in the Program Management Office of Restructuring and Fiscal Affairs with the Puerto Rico Electric Power Authority (“PREPA”). I am over 18 years of age.

2. In my role as Administrator in the Program Management Office, I (i) develop policy rationales that inform PREPA’s Governing Board regarding project prioritization and approach to project implementation; (ii) confer with and advise PREPA’s management and Governing Board on fiscal and restructuring matters; and (iii) implement PREPA’s certified fiscal plans and oversee full compliance of corporate strategy, financials, budget, and project implementation to secure working capital for PREPA.

3. I am authorized to make and submit this declaration on behalf of PREPA and I am familiar with certain of the books, records, policies and documents maintained by PREPA (the “Business Records”). The Business Records are kept by PREPA in the regular course of its business and are made at or near the time of the events appearing therein by, or from information provided by, persons with knowledge of the activity. It is the regular course of business for PREPA to make such records. Except as otherwise noted, I have personal knowledge of the matters set forth herein or have relied on information and analyses provided to me by other PREPA employees and PREPA’s advisors. If called and sworn as a witness, I could and would testify competently thereto.

4. I make this Declaration in support of PREPA’s *Omnibus Motion for Entry of an Order (A) Authorizing PREPA to Reject Certain Power Purchase and Operating Agreements, and (B) Granting Related Relief* (the “Motion”).<sup>2</sup>

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning given to them in the Motion.

### **The Rejected PPOAs**

5. PREPA is party to approximately sixty (60) different power purchase and operating agreements, master service agreements, and other agreements for renewable energy projects, under which PREPA agreed to purchase renewable power generated by the developer-counterparties to such agreements (the “PPOAs”).

6. Of the PPOAs, the twenty-seven (27) set forth on **Exhibit A** to the Motion (the “Rejected PPOAs”), are non-operational. Although the agreements were executed between 2011 and 2013, the overwhelming majority of the projects contemplated under these agreements have not progressed to an advanced enough stage of development for building to begin in the near-term, and the few that may have commenced construction are at best in the early stages. As a result, none of the projects under the Rejected PPOAs would be ready to supply cost-effective energy to PREPA in the near-term.

7. It is my understanding that the Rejected PPOAs contrast with a group of sixteen (16) non-operational PPOAs that are closer to being operational and for which PREPA and the counterparties have engaged in negotiations over the past year to amend terms to PREPA’s benefit (the “Renegotiated PPOAs”).<sup>3</sup> PREPA focused its renegotiation effort on the Renegotiated PPOAs because they fulfilled some or all of the following criteria: (i) have been identified in the past by the Puerto Rico Planning Board, the Puerto Rico Management Permits Office (OGPe), and/or PREPA staff as having nearly completed their development activities, (ii) have demonstrated a willingness to renegotiate pricing to reflect changes in the industry by agreeing to amend their agreements in or around 2013-2014, at which time they were vetted and approved by one or more prior PREPA Governing Board(s) to proceed with amendments, and/or (iii) more

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<sup>3</sup> PREPA reserves all rights with respect to the Renegotiated PPOAs, including to reclassify such PPOAs and designate them for rejection in the event that the renegotiation process is not completed in a satisfactory manner.

recently confirmed their willingness and potential ability to commence construction in the relatively near term. PREPA believes the projects contemplated under the Renegotiated PPOAs are significantly more likely to materialize in the near term and move from the development stage to commercial operation than the Rejected PPOAs.

8. PREPA has determined that the terms contemplated by the Rejected PPOAs are unfavorable compared to terms obtainable in the current market. The contract rates for sales of energy agreed to by PREPA under the Rejected PPOAs are above current market prices for renewable energy, often by more than 30%, with uncapped escalation and additional charges for renewable energy credits. If the projects contemplated under the Rejected PPOAs were developed under current contractual terms, the energy prices and contractual conditions for these projects would impose an unnecessary financial burden on the ratepayers of Puerto Rico. Based on this, PREPA has determined that the Rejected PPOAs are burdensome to PREPA and its ratepayers and that the rejection of these non-operational and above-market contracts would create significant cost savings for ratepayers by avoiding overpayment for power under certain Rejected PPOAs related to facilities that are nowhere near ready to start generating power.

9. In addition, each of the Rejected PPOAs allows PREPA to terminate without further liability if the counterparty to the Rejected PPOAs does not achieve its “Commercial Operation Date” within a specified period. In addition, nearly all of the Rejected PPOAs provide PREPA with a termination right if the counterparty does not achieve “Commencement of Construction” within a specified timeframe. In each case, the parties to the Rejected PPOAs have failed to achieve the specified Commercial Operation Date or Commencement of Construction requirements (or both). Therefore, PREPA should be able to terminate the Rejected PPOAs without further liability or incurring rejection damage claims.

10. PREPA has thus determined that rejecting and terminating the Rejected PPOAs will provide cost savings, without compromising the utility's ability to access reliable and continuous power sources, as needed, on reasonable terms.

11. As a result, on March 25, 2020, PREPA's Governing Board authorized the termination and rejection of the Rejected PPOAs. Pursuant to such authorization, PREPA notified or is notifying each of the counterparties to the Rejected PPOAs that it is exercising its termination right and, because the Rejected PPOAs were executory as of the Petition Date, PREPA is filing the Motion to reject the Rejected PPOAs pursuant to section 365 of the Bankruptcy Code to avoid any arguments about the efficacy of its terminations or priority of any damages related thereto.

*[Remainder of Page Intentionally Left Blank]*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge, and belief.

July 7, 2020

A handwritten signature in black ink, consisting of a series of loops and vertical strokes, positioned above a horizontal line.

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Fernando M. Padilla  
Administrator, Program  
Management Office  
Restructuring and Fiscal Affairs